1995

David Moore v. Sandra Moore : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

DAVID MOORE, Plaintiff/Cross-Appellant, vs. SANDRA MOORE, Defendant/Cross-Appellee.	)	Case No. 950382-CA

BRIEF OF CROSS-APPELLANT

APPEAL FROM FINAL JUDGMENT OF THE FOURTH JUDICIAL DISTRICT COURT
IN AND FOR UTAH COUNTY, STATE OF UTAH
THE HONORABLE RAY M. HARDING PRESIDING

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The cross-appellant, David Moore, pursuant to Rule 24 of the Utah Rules of Appellate Procedure, submits this Appeal Brief.

JURISDICTION

The Utah Court of Appeals has original jurisdiction to decide this appeal pursuant to Rule 3(a) of the Utah Rules of Appellate Procedure and Utah Code Ann. §78-2a-3(2)(i).

ISSUES PRESENTED FOR REVIEW

1. Did the trial court err in finding that the Divorce Decree provided for a minimum subsistence level of $1,500 per month, which amount was to continue for a minimum of three years regardless of remarriage or emancipation, irrespective of the trial court's finding that $300 per month was designated alimony and $200 a month per child was designated as child support?

2. Did the trial court err in denying David Moore's Motion to Alter or Amend Judgment and by concluding that David Moore alone was to provide medical coverage for the children, including the payment of all premiums, deductibles, co-payments and uninsured medical expenses, irrespective of the provisions of Utah Code Ann. §78-45-7.1 and §78-45-7.15?

3. Did the trial court err in concluding that cash payments made directly to the children, and all other payments of gifts to the children from David Moore in the form of cash, clothing, cars or car repair, vacations, or other miscellaneous expenses, including health insurance premiums and medical expenses, are not to be considered child support?

4. Did the trial court err in not reducing Moore's child support obligation based on the change in his financial situation after entry of the Decree of Divorce?

STANDARD OF REVIEW

The trial court's findings of fact may be set aside if found to be clearly erroneous. Rule 52 (a) of the Utah Rules of Civil Procedure; Maughan v. Maughan, 770 P.2d 156 (Utah Ct. App. 1989). The trial court's legal conclusions will be given no deference and will be reviewed for legal correctness. General Glass Corp. v. Mast Construction Co, 754 P.2d 438 (Utah Ct. App. 1988).

DETERMINATIVE AUTHORITY

The following statutory provision are determinative of the issues on appeal:

Utah Code Ann. §30-3-5(5)

Utah Code Ann. §78-45-7.10

Utah Code Ann. §78-45-7.1

Utah Code Ann. §78-45-7.15

Utah Rules of Civil Procedure, Rule 59

STATEMENT OF THE CASE

A. Nature of the Case.

This is a divorce proceeding, specifically dealing with child support issues. This is an appeal from the Findings of Fact, Conclusions of Law, and Judgment entered after a bench trial held on October 27, 1993. Also appealed is the trial court's denial of David Moore's Motion to Alter or Amend Judgment. The judgment was entered in the Fourth Judicial District Court, Utah County, Utah, the Honorable Ray M. Harding presiding.

B. Course of Proceedings.

The plaintiff filed his Complaint for Divorce in 1986. (R. 3). The Decree of Divorce was entered on August 25, 1987. (R. 58). On February 27, 1987, Sandra Moore filed a verified Petition for Order to Show Cause re: Contempt and Child Support Arrearage. (R. 68). In response, David Moore filed a Petition to Modify Decree of

Divorce (R. 95) and an Amended Petition to Modify Decree of Divorce. (R. 99).

Trial on the Order to Show Cause and Petition to Modify was held before Judge Harding on October 27, 1993. (R. 387, R. 454-680). On December 2, 1993, Judge Harding issued his Memorandum Decision containing his ruling on trial issues. (R. 405). Before the entry of any final judgment, Sandra Moore filed a Request for Supplemental Rulings. (R. 412). On March 7, 1994, Judge Harding issued a Memorandum Decision on that Request for Supplemental Rulings. (R. 414). Findings of Facts, Conclusion of Law and Judgment were finally entered on April 13, 1995 (R. 420).

On April 24, 1995, David Moore filed a Motion to Alter or Amend Judgment regarding his past and future obligation to provide medical coverage for the children. (R. 422). In a Memorandum Decision of June 19, 1995, Judge Harding denied David Moore's Motion to Alter or Amend Judgment. (R. 443). The Order Denying Plaintiff's Motion to Alter or Amend Judgment was entered on July 6, 1995. (R. 444). David Moore filed his Notice of Appeal and Cost Bond on August 3, 1995 (R. 451-453).

STATEMENT OF FACTS

1. The Decree of Divorce ("Decree") in this case was entered on August 25, 1987. (R.58).

2. The Decree was drafted by counsel for Sandra Moore Nielson ("Nielson"). (R. 462, 464).

3. David Moore ("Moore") was not represented by counsel regarding the regarding the drafting of the Decree. (R. 459).

4. Moore and Nielson have six children: Janessa, born August 12, 1970; Holly, born April 14, 1972; Matt, born March 9, 1973; John, born February 12, 1976; Nathan, born July 28, 1978; and Jamie Lee, born March 22, 1983. (R. 47-53).

5. The Decree provided that Moore was to pay Nielson the sum of "$1,500 per month, for alimony and child support." (R. 54-58).

6. The Decree does not make any specific allocation of the $1,500 regarding how much is to be paid for alimony and how much is to be paid for child support per month. (R. 54-58, 462-464).

7. Negotiations of the parties before the Decree was entered establish that $300 per month was to be paid for alimony

and $200 was to be paid for the six children of Moore and Nielson for a total child support payment of $1,200 per month. (R. 460).

8. Judge Harding specifically found that under the Decree, alimony was $300 a month and child support was $200 per month per child. (R. 403-405, 415-420).

9. Judge Harding ordered any child support arrearage "to be offset by any amounts previously paid for alimony and child support." (R. 403-405, 415-420).

10. At the time the Decree of Divorce was entered, David Moore was earning only $2,000 a month. It was anticipated that David Moore's income would increase in the future. (R. 471, 630, 54-58).

11. The Decree stated that the $1,500 per month would not be reduced or modified before June 1, 1988. (R. 54-58).

12. Moore filed his initial Petition to Modify Decree of Divorce on or about August 26, 1989. (R. 95).

13. In July of 1988, Sandra Moore remarried. (R. 636).

14. In August of 1988, Jenessa Moore turned 18 and went to live in California. On April 14, 1990, Holly Moore turned 18. Matt Moore turned 18 on March 9, 1993. (R. 47-53).

15. Moore paid $1,500 alimony and child support every month from July of 1987 through July of 1988. (Plaintiff Exhibit 10, R. 384, 415-420).

16. In August, 1988, Moore began paying $1,000 alimony and child support, deducting $300 paid for alimony based on Nielson's remarriage in July of 1988 and deducting $200 per month for Jenessa, who reached the age of majority in August of 1988. (R. 463, 415-420).

17. From August 1988 to April 1990, when Holly Moore reached the age of majority, Moore paid a total of $16,214 in child support directly to Nielson. (Plaintiff Exhibit 10, Defendant Exhibit 26).

18. From August 1988 to April 1990, Moore paid an additional $1,110 directly to Jenessa Moore for support. (Plaintiff Exhibit 10, R. 384).

19. From June 1989 through December 1989, Holly lived with Moore in Sandy, Utah. For that seven month period, David Moore reduced his child support payment to Sandra Moore by $200, representing support for Holly during those months. (Plaintiff Exhibit 10, Defendant Exhibit 26, R. 415-420).

20. Matt Moore turned 18 on March 9, 1991. (R. 47-53).

21. From April 1990 through March 1991, Moore paid $9,100 in child support directly to Nielson. During that period of time, Moore paid $700 directly to Jenessa for support. (Plaintiff Exhibit 10, Defendant Exhibit 26, R. 415-420).

22. From April 1991 to the time of trial, Moore made cash payments directly to Nielson of $9,325, including one $3,000 cashiers check in December 1992/January 1993 and a $2,900 cashiers check in April 1993. (Plaintiff Exhibit 10, Defendant Exhibit 26, R. 384, R. 415-420).

23. In June 1993, Moore gave title to a $3,000 1983 Chevy automobile to Nielson. It was understood by the parties that that was $3,000 toward child support. Judge Harding did not allow this as child support. (R. 403-405).

24. In addition to these direct child support payments, Moore paid over $70,000 since entry of the Decree to the time of trial, either directly to his children or for clothing, cars and car repairs, food, health insurance premiums, medical expenses, vacations, gifts, or other miscellaneous expenses, all for the childrens' benefit. (Plaintiff Exhibit 10).

25. In September of 1991, Moore had to start making payments for COBRA health insurance coverage when his employment with Tiffany's terminated. His monthly payment for insurance went from $91.90 to the COBRA payment of $625 per month. Moore paid $625 per month for health insurance through April of 1992, when the COBRA insurance premium rose to $722 per month. That $722 a month was paid through March of 1993, when COBRA coverage expired. He spent $8,382 in 1992 in health insurance premiums, and $4,811 for such premium in 1993, through the time of trial. Moore then began paying $260 a month for HMO coverage provided through Metropolitan Life, his current wife's insurer. (R. 495-498, Plaintiff Exhibit 10).

26. From August of 1987 to October of 1993, Moore paid $21,396.30 in health insurance premiums and for Jamie Moore's medical expenses. (Plaintiffs Exhibit 10).

27. David Moore's COBRA health insurance with Aetna has paid $27,263.97 for medical treatment provided to Jamie Moore. (R. 499, Plaintiff Exhibit 7).

28. Moore filed an individual Chapter 7 Bankruptcy Petition on December 22, 1992 in the United States Bankruptcy Court for the

Central District of California, case number LA92-58443-KL. (R. 512, Plaintiff Exhibit 8). Moore was discharged in that bankruptcy proceeding on April 30, 1993. (R. 514-15, Plaintiff Exhibit 9).

29. David Moore's net income for the years 1987 through 1991 s as follows: 1987 - $20,639; 1988 - $21,197; 1989 - $26,883; 1990 - $37,610; 1991 - $35,404. (R. 471-477, Plaintiff Exhibits 1, 2, & 3). In 1992, David Moore received $10,710.00 in unemployment benefits from the state of California. He also had a net business loss of $7,346.00. (R. 478-479, Plaintiff Exhibit 5).

30. In 1993, up to the time of trial in October, David Moore had no gross income, while seeking employment. (R. 481-482).

SUMMARY OF ARGUMENTS

The trial court erred in concluding that the $1,500 a month subsistence payment was to continue for a minimum of three years after the decree of divorce, regardless of Sandra Moore's remarriage or any of the Moore children reaching the age of majority. The trial court was correct in finding that the agreement between the parties provided for $300 a month in alimony and $200 per month per child in child support. Nowhere in the decree of divorce is there an agreement by the parties that $1,500

subsistence level would continue for three years. In fact, the decree of divorce specifically stated that $1,500 amount could be modified after the first year. Sandra Moore remarried in July of 1988. Jenessa Moore turned 18 on August 12, 1988. Holly Moore turned 18 on August 14, 1990. Under Utah statutory and case law, the $300 alimony payment to Sandra Moore terminated on her remarriage. The $200 support payment for Jenessa terminated when she turned 18, the $200 payment for Holly Moore terminated when she turned 18. Because of the Court Order requiring the $1,500 subsistence to last for three years, David Moore was improperly ssessed $13,100 in alimony and child support payments.

The trial court required Moore to accept total responsibility for providing health insurance for the children. from July 1987 through October 1993, David Moore paid $21,396.30 in health insurance premiums and medical payments for the children. Under the trial court's ruling, Sandra Moore has no obligaiton to any of that cost. David Moore argues that, pursuant to Utah Code Ann. §78-45-7.15 Sandra Moore should be responsible for half of that amount and that David Moore, already

having paid that amount, should be given a credit or deduction from any child support arrearage, if any, assessed against him.

The previous argument, that Sandra Moore should bear one-half of the health insurance premiums, applies only if moore's argument that the entire $21,396.30 paid in health insurance premiums and uninsured medical expenses, over and above all payments specifically made for child support, should be deducted from his child support obligation. This was requested of the trial court, but rejected. A deduction for those health insurance premiums and medical expenses paid is consistent with this Court's decision in Cummings v. Cummings, 821 P.2d 472, (Utah Ct. App. 1991).

Finally, the trial court erred in not reducing David Moore's child support obligation, based on the evidence of his change in financial circumstances. In this brief, David Moore has marshalled all evidence in support of Sandra Moore's claim that support payments should be increased, or at least not decreased. The evidence supports the reduction in child support payments pursuant to state child support guidelines. This Court should adopt David Moore's proposed Findings of Fact 30-36 and Conclusion of Law No.

11, confirming that, through the date of trial, David Moore had no outstanding child support obligation to Sandra Moore.

ARGUMENT

POINT I

> WHILE THE TRIAL COURT WAS CORRECT IN FINDING THAT THE AGREEMENT BETWEEN THE PARTIES PROVIDED FOR $300 A MONTH IN ALIMONY AND $200 PER MONTH PER CHILD IN CHILD SUPPORT, THE TRIAL COURT ERRED IN CONCLUDING THAT THE $1,500 PAYMENT PER MONTH WAS TO CONTINUE FOR A MINIMUM OF THREE YEARS REGARDLESS OF REMARRIAGE OR THE CHILDREN REACHING THE AGE OF MAJORITY.

Before the Decree of Divorce was entered, the parties negotiated what amount per month would be paid for alimony and child support. The parties agreed on the amount of $1,500. Trial testimony differed on how that amount was to be broken down between alimony and child support.

David Moore, through a lawyer he retained, initially proposed $125 a month per child for the six children in child support and $750 a month in alimony, totaling the $1,500 monthly payment. (R. 458). Sandra Moore acknowledges that specific proposal was made to her early in the negotiations. (R. 629).

David Moore couldn't afford his lawyer, and went to a meeting with Sandra Moore and her attorney. At that meeting, the parties agreed on $200 per month per child for child support and $300 per month for alimony. (R. 460). Sandra Moore acknowledges that the specific division of alimony and child support may have been discussed, but does not believe any specific agreement was reached regarding such division. (R. 623-633).

Sandra Moore's attorney prepared the Decree of Divorce. David Moore viewed the document, confirming that it designated the $1,500 per month specifically "for alimony and child support." At the time, he was not concerned with the language because it was essentially consistent with their agreement, even though it did not specifically break down the amounts designated for alimony and child support. (R. 462).

Sandra Moore remarried in July of 1988 (R. 462). The Moores' oldest daughter Janessa turned 18 on August 12, 1988. (R. 463). According to David Moore's understanding of the Agreement between the parties regarding alimony and child support, he informed Sandra that he would no longer be paying the $300 a month in alimony because of her remarriage. He also informed Sandra that he would

be reducing his child support obligation by $200 a month because Janessa had reached the age of majority. (R. 462). Sandra Moore acknowledged David Moore discussing such a reduction with her at around that time. (R. 634).

When David Moore and Sandra Moore discussed these issues in the summer of 1988, Sandra told David that the Divorce Decree didn't specifically designate what amount would be paid for child support and what amount would be paid for alimony. (R. 463). David replied that the $200 per child and $300 per month alimony was "exactly what we talked about." (R. 463).

According to David Moore, Sandra Moore then explained that her attorney had told her that the attorney had deliberately left that language ambiguous so that she could argue she was to receive $1,500 a month indefinitely, irrespective of marriage or the children reaching the age of majority. (R. 464).

In her testimony, Sandra Moore acknowledged telling David, after August of 1988, that the decree didn't designate the amounts to be paid in alimony and child support, only that $1,500 was to be paid every month. (R. 635). Sandra Moore denies that her lawyer

told her that he had drafted at the document that way deliberately. (R. 635-636).

David Moore declared tax deductions for alimony for $300 a month from the divorce until Sandra Moore was remarried. (R. 637 and Plaintiff's Exhibits 1, 2 & 3). Sandra Moore doesn't remember if she declared alimony income in 1987 and 1988 (R. 638). Sandra Moore's tax records had been requested back and forth during litigation, but were not available at the time of trial. (R. 638).

The disputed paragraph in the Decree of Divorce regarding alimony and child support reads as follows:

> That Plaintiff is ordered to pay $1,500 per month to Defendant, in cash each month, for alimony and child support during the pendency of this action. This amount is regarded as a minimum subsistence level for Defendant and her six children not withstanding the fact that Plaintiff is going to accept a job which will initially pay approximately $2,000 per month. The parties are ordered to exchange financial information and disclose their respective financial statements each year and renegotiate the level of support and maintenance between them once each year for three (3) years at which time a permanent level of support shall be fixed. For purposes of this Decree of Divorce, it is hereby ordered that the minimum level of $1,500.00 shall not be reduced or modified before June 1, 1988.

There is inherent ambiguity in that paragraph because it does not break down the amount to be paid per month for child support and the amount to be paid per month for alimony. It simply states $1,500.00 a month shall be paid for alimony and child support. In the face of this ambiguity, Judge Harding admitted parole evidence at trial for assistance in interpreting what the parties intended by that language. Admitting extrinsic evidence was proper under the circumstances. The Utah Supreme Court and this Court have repeatedly held that a trial court may consider extrinsic evidence in interpreting the contract once the language of the contract is deemed ambiguous. Faulkner v. Farnsworth, 665 P.2d 1252 (Utah 1983). Once that ambiguity is established, evidence of prior or contemporaneous conversations, representations, or other statements, for purposes of explaining or adding to the terms of the agreement, are admissible. Hall v. Process Instruments & Control, 890 P.2d 1024 (Utah 1995).

Having heard all testimony regarding the negotiations of the parties regarding the $1,500.00 monthly payment, Judge Harding specifically found that, of that $1,500 amount, $300 per month was

for alimony, and $200 per month per child was for child support (R. 403-405, 415-420).

David Moore submits that such a finding was appropriate and fully supported by the evidence. That finding of fact may not be overturned unless clearly erroneous. The error assigned by David Moore on this issue goes not to that finding of fact, but rather to Judge Harding's conclusion of law based on that finding of fact.

Even though Judge Harding found that $300 a month was for alimony and $200 child per month was for child support, he went on to conclude that that $1,500.00 subsistence level was to remain in place for three years, irrespective of the remarriage of Sandra Moore or any of the Moore children reaching the age of majority. That conclusion of law is contrary to Utah statute and case law, as well as being contrary to the language of the Decree of Divorce.

Utah Code Ann. §30-3-5 (5) provides, in relevant, as follows:

> Unless a Decree of Divorce specifically provides otherwise, any order of the court that a party pay alimony to a former spouse automatically terminates upon the remarriage of that former spouse.

In this case, the Decree of Divorce did state that "the minimum level of $1,500.00 shall not be reduced or modified before

June 1, 1988." It is undisputed that no reduction of that $1,500.00 monthly payment took place before June 1, 1998, in accordance with the Decree. David Moore filed his initial petition to modify the Decree of Divorce on or about August 26, 1989 (R. 95).

There is implicit in a divorce decree the provision that alimony continues only so long as the divorcing wife remains unmarried. Austad v. Austad, 2 Utah.2d 49, 269 P.2d 284 (Utah 1954). A wife's remarriage to another man after her divorce terminates her former husband's duty to pay alimony. Russell v. Russell, 587 P.2d 133 (Utah 1978).

The Divorce Decree in this case does not specifically provide that alimony is to continue after Sandra Moore's remarriage. The provision that the $1,500 subsistence level is to be maintained at least until June 1, 1998 does not apply because Sandra Moore was married in July of 1988, after that provision expired by its own terms. As such, under Utah Code Ann. §30-3-5 (5) and Utah case law authority, Judge Harding erred in concluding that the $300 alimony payment was to be made for three years from the date of the Divorce Decree. That ruling required the $300 alimony payment for 25

months after Sandra Moore's remarriage, for a total unjustified alimony payment of $7,500.00. That amount should be credited, as a matter of law, against any alleged child support arrearage in this case, if any.

Regarding child support, Utah Code Ann. §78-45-7.10 provides as follows:

> (1) When a child becomes 18 years of age, or has graduated from high school during the child's normal and expected year of graduation, whichever occurs later, the base child support award is automatically reduced to reflect the lower based combined child support obligation shown in the table for the remaining number of children due child support, unless otherwise provided in the child support order.
>
> (2) The award may not be reduced by a per child amount, derived from the base child support award originally ordered.

Based on Judge Harding's ruling, David Moore is entitled to credit for all child support payments required of him under the court's order for Janessa Moore and Holly Moore, after they reached the age of majority. Janessa Moore turned 18 on August 12, 1988. Holly Moore turned 18 on April 14, 1990. As mentioned, the trial court required the payment of $200 per month per child for three

years after the entry of the Decree of Divorce, or from August 25, 1987 to August 25, 1990. The court also required the $1,500 monthly payment to remain in force for at least one year. As Janessa Moore did not turn 18 until after that one year period, the $200 a month payment required David Moore for Janessa from August of 1988 to August of 1990 is improper and should be a credit against any alleged arrearage owed by David Moore for child support. That amount is $4,800 ($200 a month x 24 months). Holly Moore turned 18 on August 14, 1990. The trial court's ruling required David Moore to continue paying $200 a month for child support for an additional four months, for a total overcharge of $800. That total of $5,600 should be credited against the arrearage, if any, owed by David Moore for child support.

Based on the above argument and authorities, trial court erred in concluding that the $1,500 subsistence level was to remain in effect for three years after the date of the Decree of Divorce. That error has resulted in David Moore being assessed $13,100 in alimony and child support payments that he is not required to make under Utah statute, Utah case law, or the Decree of Divorce itself.

As such, that $13,100 amount should be credited against any child support arrearage ultimately owed by David Moore.

POINT II

SANDRA MOORE SHOULD SHARE EQUALLY IN THE COST OF HEALTH INSURANCE AND PAYMENT OF UNINSURED MEDICAL EXPENSES.

Utah Code Ann. §78-45-7.1 provides, in pertinent part, as follows:

> The court shall include the following in its order:
>
> > (1) A provision assigning responsibility for the payment of reasonable and necessary medical expenses for the dependent children;
> >
> > (2) A provision requiring the purchase and maintenance of appropriate insurance for the medical expenses of the dependent children, if coverage is or becomes available at a reasonable cost.

Utah Code Ann. §78-45-7.15 provides, in pertinent part, as follows:

> (1) The court shall order that insurance for the medical expenses of the minor children be provided by a parent if it is available at a reasonable cost.
>
> (2) In determining which parent shall be ordered to maintain insurance for medical expenses, the court or administrative agency may consider the:

(a) Reasonableness of the cost;
(b) Availability of a group insurance policy;
(c) Coverage of the policy; and
(d) Preference of the custodial parent.

(3) The order shall require each parent to share equally the out-of-pocket costs of the premium actually paid by a parent for the childrens portion of insurance. . .

(5) The order shall require each parent to share equally all reasonable and necessary uninsured medical expenses, including deductibles and co payments, incurred for the dependent children and actually paid by the parents.

In this case, Judge Harding required David Moore to accept all responsibility to provide health insurance for the children. From August of 1987 to October of 1993, he paid $21,396.30 to fulfill that obligation.

Under the Judgment entered by this Court, Sandra Moore does not bear any responsibility for any of the premium payments, nor is she responsible for any deductibles, copayments, or uninsured expenses. The plaintiff submits that this is contrary to the evidence, as well as the above-quoted statutes.

David Moore should receive a credit or deduction in any child support arrearage of $10, 698.15. This argument applies only if this Court rejects Point III now addressed.

POINT III

THE TRIAL COURT ERRED IN CONCLUDING THAT CASH PAYMENTS MADE DIRECTLY TO THE CHILDREN, AND OTHER EXPENSES PAID ON BEHALF OF THE CHILDREN, INCLUDING HEALTH INSURANCE PAYMENTS AND PAYMENTS FOR MEDICAL EXPENSES, ARE NOT TO BE CONSIDERED CHILD SUPPORT.

At trial, David Moore presented Exhibit 10, which was a month by month ledger of child support and health insurance payments made by him for the years 1987 through 1993. For ease in reference, a copy of the Exhibit is attached in the Addendum. At the end of trial, David Moore's counsel presented Proposed Findings of Fact and Conclusions of Law to Judge Harding. The conversation between Moore's counsel and Judge Harding regarding the submission of those Findings and Conclusions is contained on Page 674 of the Trial Transcript. The plaintiff later submitted Supplemental Proposed Findings of Fact and Conclusions of Law. (R. 389-399). In preparing this Appeal Brief, counsel for the plaintiff has noted that the Record Index prepared by the Fourth Judicial District

Court does not identify the initial Findings of Fact and Conclusions of Law faxed to the Court before trial and then delivered to Judge Harding the afternoon of trial, as evidenced by the Trial Transcript.

While most of those Findings of Fact and Conclusions of Law were not adopted by the trial court, they are relevant to the presentation of David Moore's issues on appeal. As such, David Moore requests that those proposed Findings of Fact and Conclusions of Law, attached in their entirety in the Addendum, be included as part of the record on appeal. This request is consistent with Rule 11 (h) of the Utah Rules of Appellate Procedure, which states, in part, as follows:

> If anything material to either party is omitted from the record by error or accident or is misstated, the parties by stipulation, the trial court, or the appellate court, either before or after the record is transmitted, may direct that the omission or misstatement be corrected and if necessary that a supplemental record be certified and transmitted.

Under that rule, if Sandra Moore has any objection to supplementing the record with that document, she may have ten days

from the date this Appeal Brief is filed within which to serve such objections.

At trial, David Moore testified about the insurance premiums paid over the years after the divorce, as well as the many gifts made directly to the children in the form of cash, clothing, cars, car repairs, food, vacations, and other gifts. Based on that evidence, David Moore's Proposed Finding of Fact 22 stated as follows:

> In addition to these direct child support payments, David Moore has paid over $70,000 since entry of the Decree either directly to his children or for clothing, cars and car repairs, food, vacations, gifts, or other miscellaneous expenses, all for the childrens' benefit.

Based on that evidence, as well as testimony of actual child support payments made, Conclusion of Law 11 read as follows:

> Under all of the circumstances presented by the evidence, David Moore is current in his child support obligation to Sandra Moore Nielson.

It was intended by David Moore that the other expenses listed as child support include all the specific health insurance premium payments and payment for medical expenses listed in Exhibit 10.

Frankly, David Moore has not been able to come up with any convincing authority that payments made by a parent for food, clothing, vacations, and the like may be tabulated and credited as specific child support payments. David Moore does, however, believe that under the circumstances, the health insurance premium payments, as well as any direct payments for Jamie Moore's medical expenses, should be legitimately assessed as child support or, if not child support per se, that such payments be reduced from any alleged child support arrearage owed by David Moore.

In Cummings v. Cummings, 821 P.2d 472 (Utah Ct. App. 1991), the trial court reduced the plaintiff father's child support arrearages by the amount he had paid for medical expenses and insurance premiums for the children. On appeal, the defendant wife contended that the trial court erred in allowing such a reduction. On appeal, this Court affirmed the deduction for medical expenses and insurance premiums and remanded the case to the trial court for a proper accounting of any child support arrearages owed. Id. at 481.

The undisputed evidence at trial confirmed that from July 1987 through the time of trial, October 1993, David Moore paid

$21,396.30 in health insurance premiums and medical expenses as follows:

1987 - Premiums of $499.80;

1988 - Premiums of $1,703.30 + medical expenses of $586;

1989 - Premiums of $1,435;

1990 - Premiums of $1,277.10;

1991 - Premiums of $2,702.10;

1992 - Premiums of $8,382;

1993 - Premiums of $4,811.

While David Moore is unable to find convincing authority that all of the over $70,000 paid directly to or for the benefit of the children should be deemed child support, authority of this Court exists to allow the $21,396.30 paid in health insurance premiums and medical expenses be deemed child support or, if not technically child support, to be deducted from any alleged child support arrearages owed by David Moore.

POINT IV

THE TRIAL COURT ERRED IN NOT REDUCING DAVID MOORE'S CHILD SUPPORT OBLIGATION BASED ON THE CHANGE IN HIS FINANCIAL CIRCUMSTANCES AFTER THE ENTRY OF THE DECREE OF DIVORCE.

On or about September 29, 1989, in response to Sandra Moore's Order to Show Cause re: Contempt and Child Support Arrearage, David Moore filed an Amended Petition to Modify Decree of Divorce.

Paragraph 8 of that Petition stated:

> The Decree of Divorce should be modified requiring plaintiff [David Moore] to pay to defendant [Sandra Moore] such sums as the court may determine based on the parties income, as set forth by the child support regulations of the State of Utah, for the support and maintenance of the four minor children presently residing with the defendant, until each child reaches 18 or completes high school in their regular graduating class, whichever occurs last. (R. 96-99).

At trial, David Moore provided documentary and testimony evidence that his net income from earnings for the years after the divorce were as follows:

1987 - $20,639;

1988 - $21,197;

1989 - $26,883;

1990 - $37,610;

1991 - $35,404;

1992 - $10,710 unemployment compensation - $7,346 net business loss;

1993 - No gross income while seeking employment.

In addition, David Moore produced documentary evidence confirming that he had filed for bankruptcy in December of 1992 and that he had received a bankruptcy discharge in California on April 30, 1993.

In his initial proposed Findings of Fact and Conclusions of Law, which David Moore has asked to be considered part of the record pursuant to Rule 11 (h) of the Utah Rules of Appellate Procedure, David Moore calculated, according to state child support guidelines, what support obligation would be required based on that gross income. Those calculations are found in Findings of Fact 30 through 36. Based on those Findings of Fact, under the guidelines, Conclusion of Law 11 provided that "under all of the circumstances presented by evidence, David Moore is current in this child support obligation to Sandra Moore Nielson."

In ruling on these issues, in his Memorandum Decision of December 2, 1993 and in the Findings of Fact, Conclusions of Law and Judgment, Judge Harding simply concludes that "there is no

evidence that this amount [of support] should be increased." Based on his ruling, it is also assumed that there was not evidence, according to Judge Harding, that the amount should be decreased.

Trial courts have continuing jurisdiction to make reasonable and necessary changes in child support awards, taking into account not only the needs of the children, but also the ability of the parent to pay. Ostler v. Ostler, 789 P.2d 713 (Utah Ct. App. 1990). The change in circumstances necessary to justify modification of a divorce decree varies with the type of modification contemplated. Provisions dealing with alimony and child support are more susceptible to alterations, as financial circumstances are subject to rapid and sometimes unpredictable change. Whitehead v. Whitehead, 790 P.2d 57 (Utah Ct. App. 1990).

In this case, David Moore requested the modification of the original divorce decree based on change in his financial circumstances. He requested that the decree be modified requiring him to pay such sums as determined based on his income as set forth in the child support guidelines of the State of Utah. At trial, David Moore presented documentary tax return information, unemployment compensation documentation, bankruptcy petition and

discharge documentation and other verbal testimony to support the change in his financial situation since the Decree of Divorce.

Judge Harding concluded that there was no evidence to support the reduction of the $200 per month for each child. David Moore understands his obligation to marshall all of Sandra Moore's evidence to support the judge's determination and then demonstrate that evidence is insufficient to support the judge's conclusion that support payments should remain the same. Watson v. Watson, 837 P.2d 1 (Utah Ct. App. 1992). In support of her claim that David Moore was making, or could make, more than he presented by way of documentary and other evidence, Sandra Moore submitted the following:

Sandra Moore had been married to David Moore for twenty years and they had "quite a good" standard of living (R. 651-52). When asked if David shared information about his income, what he made on an annual basis, Sandra replied, "no, he just really kept me in the dark. I was too busy raising our family, I guess, to pry too much." (R. 652). She testified that when they came to Utah in 1980, they came "under duress" and "did alot of cutting back". (R. 652-53). After a while, they bought a home in Pepperwood and

started buying property in Alpine. They built a home in Alpine over the years (R. 653). She testified that she believes David Moore is capable of working if he chooses to and that his unemployment the past two years is voluntary. (R. 653-654). When asked if she believed that David Moore was capable of earning an income of at least $5,000 a month, Judge Harding sustained an objection of lack of foundation. She was then asked if during the twenty years of their marriage, there were any years that David didn't make at least $5,000 a month, she responded, "I knew at least that much". (R. 654). She testified that David Moore had told their daughter, Holly, that there was a point when a company he owned was making $200,000 a year. There was no evidences as to what his personal income from that company was. (R. 654). No documentary evidence of any kind was presented by Sandra Moore to support her opinion that David could have been earning more than he was.

In the trial transcript, from pages 471-483, David Moore explains in detail his work history from 1987 to 1983, including money earned and expenses incurred. Documentary evidence produced confirm the net income figures previously listed in this Brief for

years 1987 through 1983. Under those circumstances, David Moore submits that marshaling all evidence in favor of Sandra Moore is still insufficient, when compared with the evidence produced by David Moore, to support Judge Harding's conclusion that child support should remain at $200 a month per child per month.

Based on that evidence, David Moore submits that Judge Harding's conclusions regarding child support be vacated and that David Moore's initial proposed Findings of Fact 30, 31, 32, 33, 34, 35, and 36, be adopted, along with Conclusion of Law 11, that David Moore had satisfied his child support obligation to Sandra Moore, through the time of trial of October 1993.

CONCLUSION

Based on the above argument and authorities, David Moore requests that this Court credit him $13,100 improperly assessed in alimony and child support after Sandra Moore remarried and after Janessa and Holly Moore reached the age of majority. Under Utah Code Ann. §78-45-7.15 David Moore should receive a credit against any child support arrearage owed for one-half of the $21,396.30, or $10,698.15, paid in health insurance premiums and for medical bills from July 1987 to October of 1993. That is only if this Court does

not allow a deduction of the entire $21,396.30, which it should under Cummings v. Cummings, 821 P.2d 472 (Utah Ct. App. 1991). Finally, based on the evidence of the change in circumstances in David Moore's financial situation, Moore's initial proposed Findings of Fact No. 30-36 should be adopted, as well as Conclusion of Law No. 11, confirming that David Moore had satisfied his support obligation to Sandra Moore through the time of the October 1993 trial.

DATED this 1st day of April, 1996.

LEHMAN, JENSEN & DONAHUE, L.C.

GORDON K. JENSEN
Attorneys for David Moore

MAILING CERTIFICATE

The undersigned certifies that two copies of the foregoing BRIEF OF CROSS-APPELLANT were mailed this 1st day of April, 1996, via first class U.S. Mail, postage prepaid, upon the following:

Steven C. Tycksen
LONE PEAK LAW OFFICE
P.O. Box 480
Draper, Utah 84020-0480

ADDENDUM

or vice versa, 14 A.L.R.3d 703.

Nunc pro tunc: entering judgment or decree of divorce nunc pro tunc, 19 A.L.R.3d 648.

Vacating or setting aside divorce decree after remarriage of party, 17 A.L.R.4th 1153.

Necessity that divorce court value property before distributing it, 51 A.L.R.4th 11.

Authority of court, upon entering default judgment, to make orders for child custody or support which were not specifically requested in pleadings of prevailing party, 5 A.L.R.5th 863.

Key Numbers. — Divorce ⇐ 88, 152.

30-3-4.1 to 30-3-4.4. Repealed.

Repeals. — Laws 1990, ch. 230, § 4 repeals these sections, as last amended by L. 1989, ch. 104, §§ 2 to 5, providing for the appointment, authority, duties, and jurisdiction of court commissioners, effective April 23, 1990.

30-3-5. Disposition of property — Maintenance and health care of parties and children — Division of debts — Court to have continuing jurisdiction — Custody and visitation — Termination of alimony — Nonmeritorious petition for modification.

(1) When a decree of divorce is rendered, the court may include in it equitable orders relating to the children, property, debts or obligations, and parties. The court shall include the following in every decree of divorce:

(a) an order assigning responsibility for the payment of reasonable and necessary medical and dental expenses of the dependent children;

(b) if coverage is or becomes available at a reasonable cost, an order requiring the purchase and maintenance of appropriate health, hospital, and dental care insurance for the dependent children;

(c) pursuant to Section 15-4-6.5:

(i) an order specifying which party is responsible for the payment of joint debts, obligations, or liabilities of the parties contracted or incurred during marriage;

(ii) an order requiring the parties to notify respective creditors or obligees, regarding the court's division of debts, obligations, or liabilities and regarding the parties' separate, current addresses; and

(iii) provisions for the enforcement of these orders;

(d) provisions for income withholding in accordance with Title 62A, Chapter 11, Parts 4 and 5; and

(e) with regard to child support orders issued or modified on or after January 1, 1994, that are subject to income withholding, an order assessing against the obligor an additional $7 per month check processing fee to be included in the amount withheld and paid to the Office of Recovery Services within the Department of Human Services for the purposes of income withholding in accordance with Title 62A, Chapter 11, Parts 4 and 5.

(2) The court may include, in an order determining child support, an order assigning financial responsibility for all or a portion of child care expenses incurred on behalf of the dependent children, necessitated by the employment or training of the custodial parent. If the court determines that the circumstances are appropriate and that the dependent children would be adequately cared for, it may include an order allowing the noncustodial parent to provide

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History: R.S. 1898 & C.L. 1
1909, ch. 109, § 4; C.L. 191
1933 & C. 1943, 40-3-5; L. 19
1975, ch. 81, § 1; 1979, ch. 11
13, § 1; 1985, ch. 72, § 1; 198
1991, ch. 257, § 4; 1993, ch.
ch. 261, § 1; 1994, ch. 284, §

Amendment Notes. — Th
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Subsection (1), added Subsec
inserted "and obligations for
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ATTACHMENT
A-1

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the day care for the dependent children, necessitated by the employment or training of the custodial parent.

(3) The court has continuing jurisdiction to make subsequent changes or new orders for the support and maintenance of the parties, the custody of the children and their support, maintenance, health, and dental care, or the distribution of the property and obligations for debts as is reasonable and necessary.

(4) (a) In determining visitation rights of parents, grandparents, and other members of the immediate family, the court shall consider the best interest of the child.

(b) Upon a specific finding by the court of the need for peace officer enforcement, the court may include in an order establishing a visitation schedule a provision, among other things, authorizing any peace officer to enforce a court ordered visitation schedule entered under this chapter.

(5) Unless a decree of divorce specifically provides otherwise, any order of the court that a party pay alimony to a former spouse automatically terminates upon the remarriage of that former spouse. However, if the remarriage is annulled and found to be void ab initio, payment of alimony shall resume if the party paying alimony is made a party to the action of annulment and his rights are determined.

(6) Any order of the court that a party pay alimony to a former spouse terminates upon establishment by the party paying alimony that the former spouse is residing with a person of the opposite sex. However, if it is further established by the person receiving alimony that that relationship or association is without any sexual contact, payment of alimony shall resume.

(7) If a petition for modification of child custody or visitation provisions of a court order is made and denied, the court shall order the petitioner to pay the reasonable attorneys' fees expended by the prevailing party in that action, if the court determines that the petition was without merit and not asserted or defended against in good faith.

(8) If a petition alleges substantial noncompliance with a visitation order by a parent, a grandparent, or other member of the immediate family pursuant to Section 78-32-12.2 where a visitation right has been previously granted by the court, the court may award to the prevailing party costs, including actual attorney fees and court costs incurred by the prevailing party because of the other party's failure to provide or exercise court-ordered visitation.

History: R.S. 1898 & C.L. 1907, § 1212; L. 1909, ch. 109, § 4; C.L. 1917, § 3000; R.S. 1933 & C. 1943, 40-3-5; L. 1969, ch. 72, § 3; 1975, ch. 81, § 1; 1979, ch. 110, § 1; 1984, ch. 13, § 1; 1985, ch. 72, § 1; 1985, ch. 100, § 1; 1991, ch. 257, § 4; 1993, ch. 152, § 1; 1993, ch. 261, § 1; 1994, ch. 284, § 1.

Amendment Notes. — The 1991 amendment, effective April 29, 1991, inserted "debts or obligations" in the introductory paragraph of Subsection (1), added Subsection (1)(c), and inserted "and obligations for debts" near the end of Subsection (3).

The 1993 amendment by ch. 152, effective May 3, 1993, substituted "members of the immediate family" for "relatives" and "best interest" for "welfare" in Subsection (4); substituted "shall" for "may" and inserted "or defended against" in Subsection (7); added Subsection (8); and made stylistic changes.

The 1993 amendment by ch. 261, effective January 1, 1994, inserted "or becomes" in Subsection (1)(b), added Subsections (1)(d) and (1)(e), and made related stylistic changes.

The 1994 amendment, effective May 2, 1994, designated Subsection (4) as (4)(a) and added Subsection (4)(b).

Cross-References. — Grandparents' visitation rights, § 30-5-2.

Uniform Premarital Agreement Act, Title 30, Chapter 8.

mother's health, and set the award at $200 per month per child. Ostler v. Ostler, 789 P.2d 713 (Utah Ct. App. 1990).

Modification of support.

—Divorce decree.

The divorce decree establishes the duty of support the ex-husband owes to his ex-wife and a complaint under this section to modify that duty of support is improper. Mecham v. Mecham, 570 P.2d 123 (Utah 1977).

State recovery of assistance to child.

State, which was joined as a party to the divorce action before court entered order determining husband's obligation for child support, was entitled to reimbursement from the husband for assistance furnished the child before entry of the order for support in the amount, based upon the relevant factors as set out in this section, as set out in the support order. Roberts v. Roberts, 592 P.2d 597 (Utah 1979).

Cited in Kelly v. Draney, 754 P.2d 92 (Utah Ct. App. 1988); Johnson v. Johnson, 771 P.2d 696 (Utah Ct. App. 1989); Proctor v. Proctor, 773 P.2d 1389 (Utah Ct. App. 1989); Moon v. Moon, 790 P.2d 52 (Utah Ct. App. 1990); Osguthorpe v. Osguthorpe, 791 P.2d 895 (Utah Ct. App. 1990).

COLLATERAL REFERENCES

Utah Law Review. — Note, New Standards for Child Support Enforcement in Utah, 1986 Utah L. Rev. 591.

From Guesswork to Guidelines—The Adoption of Uniform Child Support Guidelines in Utah, 1989 Utah L. Rev. 859.

Am. Jur. 2d. — 41 Am. Jur. 2d Husband and Wife § 330 et seq.; 59 Am. Jur. 2d Parent and Child § 54 et seq.

C.J.S. — 41 C.J.S. Husband and Wife § 48 et seq.; 67A C.J.S. Parent and Child § 50.

Key Numbers. — Husband and Wife ⇐ 4; Parent and Child ⇐ 3.1(5).

78-45-7.1. Medical and dental expenses of dependent children — Assigning responsibility for payment — Insurance coverage.

When no prior court order exists or the prior court order makes no specific provision for the payment of medical and dental expenses for dependent children, the court in its order:

(1) shall include a provision assigning responsibility for the payment of reasonable and necessary medical and dental expenses for the dependent children; and

(2) may include a provision requiring the purchase and maintenance of appropriate health, hospital, and dental care insurance for those children if insurance coverage is or becomes available at a reasonable cost.

History: C. 1953, 78-45-7.1, enacted by L. 1984, ch. 13, § 3; 1990, ch. 166, § 3.

Amendment Notes. — The 1990 amendment, effective April 23, 1990, added the subsection designations, substituted "is or becomes available" for "is available" in Subsection (2), and made stylistic changes.

Cross-References. — Divorce, maintenance and health care of parties, § 30-3-5.

78-45-7.2. Application of guidelines — Rebuttal.

(1) The guidelines apply to any judicial or administrative order establishing or modifying an award of child support entered on or after July 1, 1989.

(2) (a) The child support guidelines shall be applied as a rebuttable presumption in establishing or modifying the amount of temporary or permanent child support.

(b) The rebuttable presumption means the provisions and considerations required by the guidelines and the award amounts resulting from

78-45-7.10. Reduction when child becomes 18.

(1) When a child becomes 18 years of age the base combined child support award is automatically reduced to reflect the lower base combined child support obligation shown in the table for the remaining number of children due child support, unless otherwise provided in the child support order.

(2) The award may not be reduced by a per child amount derived from the base child support award originally ordered.

History: C. 1953, 78-45-7.10, enacted by L. 1989, ch. 214, § 12.

Effective Dates. — Laws 1989, ch. 214 became effective on April 24, 1989, pursuant to Utah Const., Art. VI, Sec. 25.

78-45-7.11. Reduction for extended visitation.

(1) The child support order shall provide that the base child support award be reduced by 50% for each child for time periods during which the order grants specific extended visitation for that child for at least 25 of any 30 consecutive days. Only the base child support award is affected by the 50% abatement. The amount to be paid for work-related child care costs may be suspended if the costs are not incurred during the extended visitation.

(2) For purposes of this section the per child amount to which the abatement applies shall be calculated by dividing the base child support award by the number of children included in the award.

History: C. 1953, 78-45-7.11, enacted by L. 1989, ch. 214, § 13; 1990, ch. 100, § 9.

Amendment Notes. — The 1990 amendment, effective April 23, 1990, deleted a third sentence from Subsection (1) that read "The amount added to the base child support award for uninsured extraordinary medical expenses may continue uninterrupted" and made a stylistic change in the first sentence.

Effective Dates. — Laws 1989, ch. 214 became effective on April 24, 1989, pursuant to Utah Const., Art. VI, Sec. 25.

78-45-7.12. Income in excess of tables.

If the combined adjusted gross income exceeds the highest level specified in the table, an appropriate and just child support amount may be ordered, but the amount ordered may not be less than the highest level specified in the table for the number of children due support.

History: C. 1953, 78-45-7.12, enacted by L. 1989, ch. 214, § 14.

Effective Dates. — Laws 1989, ch. 214 became effective on April 24, 1989, pursuant to Utah Const., Art. VI, Sec. 25.

78-45-7.13. Advisory committee — Membership and functions.

(1) On or before May 1, 1989 and May 1, 1991, and then on or before May 1 of every fourth year subsequently, the governor shall appoint an advisory committee consisting of:

(a) two representatives recommended by the Office of Recovery Services;

(b) two representatives recommended by the Judicial Council;

(c) two representati
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History: C. 1953, 78-45-7.13, e
1989, ch. 214, § 15; 1990, ch.

Amendment Notes. — The
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section (3).

78-45-7.14. Child su

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BASE COMBI

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Monthly Combined Adj. Gross Income	1	2
Less than $200	$20	$28
$200	$23	$34
225	25	38
250	28	42
275	51	67
300	56	73
325	60	78
350	65	84
375	69	90
400	74	96
425	78	102

Effective Dates. — Laws 1989, ch. 214 became effective on April 24, 1989, pursuant to Utah Const., Art. VI, Sec. 25.

8	9	10
7	$2,140	$2,201
8	2,172	2,233
2	2,197	2,259
6	2,222	2,285
1	2,247	2,310
-	2,272	2,336
9	2,297	2,361
4	2,322	2,387
8	2,347	2,412
3	2,363	2,439
8	2,379	2,445
1	2,395	2,462
9	2,411	2,478
5	2,427	2,495
0	2,443	2,511
5	2,459	2,528
1	2,475	2,544
6	2,491	2,560
2	2,507	2,577
7	2,523	2,593
2	2,539	2,610
8	2,555	2,626
3	2,571	2,643
9	2,587	2,659
14	2,603	2,676
29	2,619	2,692
45	2,635	2,708
60	2,650	2,725
75	2,666	2,741
91	2,682	2,758
06	2,698	2,774
22	2,714	2,791
37	2,730	2,807
52	2,746	2,824
68	2,762	2,840
83	2,778	2,856
99	2,794	2,873

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78-45-7.15. Medical and dental expenses — Insurance.

(1) Only the costs of health and dental insurance premiums for children are included in the base combined child support obligation table.

(2) Uninsured medical and dental expenses are not included in the table. The child support order shall require:

(a) the custodial parent to pay uninsured routine medical and dental expenses, including routine office visits, physical examinations, and immunizations; and

(b) both parents to share all other reasonable and necessary uninsured medical and dental expenses in a ratio to be determined by the appropriate court or administrative agency.

(3) (a) If health insurance is available to both parents at a reasonable cost and the children would gain more complete coverage by doing so, both parents shall be ordered to maintain insurance for the dependent children.

(b) If insurance is not available to both parents at a reasonable cost or if no advantage to the children's coverage would result, the parent who can obtain the most favorable coverage shall be ordered to maintain that insurance.

History: C. 1953, 78-45-7.15, enacted by L. 1989, ch. 214, § 17; 1990, ch. 100, § 11.

Amendment Notes. — The 1990 amendment, effective April 23, 1990, in Subsection (2)(b), deleted "equally" after "share" and added the language beginning "in a ratio."

Effective Dates. — Laws 1989, ch. 214 became effective on April 24, 1989, pursuant to Utah Const., Art. VI, Sec. 25.

78-45-7.16. Child care expenses — Expenses not incurred.

(1) The monthly amount to be paid for reasonable work-related child care costs actually incurred on behalf of the dependent children of the parents shall be specified as a separate monthly amount in the order.

(2) If an actual expense included in an amount specified in the order ceases to be incurred, the obligor may suspend making monthly payment of that expense while it is not being incurred, without obtaining a modification of the child support order.

History: C. 1953, 78-45-7.16, enacted by L. 1989, ch. 214, § 18; 1990, ch. 100, § 12.

Amendment Notes. — The 1990 amendment, effective April 23, 1990, in Subsection (1) deleted "(a) The monthly amount of all known reasonable and necessary uninsured extraordinary medical expenses and" from the beginning, deleted "in addition to the base child support award" after "to be paid," and substituted "a separate monthly amount" for "two separate monthly amounts"; redesignated former Subsection (1)(b) as Subsection (2); and deleted former Subsection (2), which read "Unless the expenses described in Subsection (1) are included in the child support order, or the parents enter into a written agreement to share the expenses, one parent may not obligate both parents to pay the expenses."

Effective Dates. — Laws 1989, ch. 214 became effective on April 24, 1989, pursuant to Utah Const., Art. VI, Sec. 25.

IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH

DAVID MOORE, Plaintiff, vs. SANDRA MOORE (Nielson) Defendant.	MEMORANDUM DECISION CASE NO. 864403096 DATE: December 2, 1993 JUDGE: RAY M. HARDING LAW CLERK: Joe Morton DEPUTY CLERK: Georgia Snyder

This matter came before the Court for hearing on modification to the Decree of Divorce. Having heard the evidence and argument of counsel, the Court hereby finds as follows:

1) The parties were granted a Decree of Divorce on August 25, 1987.

2) At that time the parties had six minor children.

3) The stipulation, entered into by the parties, and the decree provide a minimum subsistence level for the Defendant and her six children of $1500 per month.

4) This amount was to continue for a minimum of three years regardless of remarriage or emancipation.

5) There is not evidence that this amount should be increased.

6) The amount of alimony is $300.

7) The amount of child support is $200 per month per child.

8) At the time of this memorandum decision, only three of the children are still minors.

9) The total amount owed by the Plaintiff in alimony and child support is to be figured using the following amounts:

ATTACHMENT A-2

a) For the three year period from the Decree of Divorce through August 24, 1990, the amount owed is $1500 per month.

b) For the period between August 25, 1990 and March 9, 1991, the amount is $800.00 per month.

c) For the period between March 10, 1991 and February 12, 1994, the amount is and will be $600.00 per month.

d) For the period between February 13, 1994 and July 28, 1996, the amount will be $400.00 per month.

e) For the period between July 29, 1996 and March 22, 2001, the amount will be $200.00 per month.

The amount owing through the current date is to be offset by any amounts previously paid for alimony and child support.

10) Plaintiff's cash payments directly to his children of $300 and $700 are not to be considered child support.

11) The value of the 1983 Chevy Citation given by the Plaintiff to the Defendant is not to be considered child support.

12) All other payment's or gifts by the Plaintiff directly to the children in the form of cash, clothing, cars or car repairs, food, vacations, gifts, or other miscellaneous expenses, are not to be considered child support.

[13) Plaintiff is to provide medical coverage for the children.]

14) The box seats were not listed in the Bankruptcy and are therefore not subject to the bankruptcy order or stay. They are marital assets and subject to distribution by this Court.

15) All other assets were subject to the bankruptcy and not subject to distribution by this Court.

16) The box seats were a marital asset known at the time of the divorce that have no real monetary value. The seats are awarded to the Plaintiff.

17) Plaintiff's interest in KC Partners had a minimal value of not more than $1000 that should have been divided between the parties. As such the Defendant is to pay the Plaintiff $500.

18) The Plaintiff is not in contempt of court

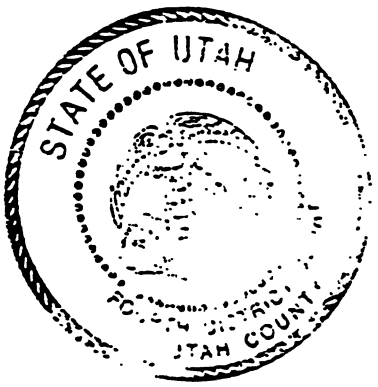
Counsel for Defendant is to prepare an order within 15 days of this decision consistent with the terms of this memorandum and submit it to opposing counsel for approval as to form prior to submission to the Court for signature. This memorandum decision has no effect until such order is signed by the Court.

Dated this 2th day of December, 1993.

BY THE COURT:

RAY M. HARDING, JUDGE

cc: Gordon K. Jensen, Esq.
Steven C. Tycksen, Esq.



IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH

DAVID N. MOORE, Plaintiff, vs. SANDRA L. MOORE, Defendant.	MEMORANDUM DECISION CASE NO. 864403096 DATE: March 7, 1994 JUDGE: RAY M. HARDING LAW CLERK: Joe Morton DEPUTY CLERK: Georgia Snyder

This matter came before the Court on Defendant's Request for Supplemental Ruling. Having received and considered Defendant's request, the Court hereby clarifies its earlier memorandum decision as follows:

1) Each party is to pay their own attorney's fees.

2) Interest on the arrearages is to be awarded at the statutory interest rate in effect at the time the judgement is entered.

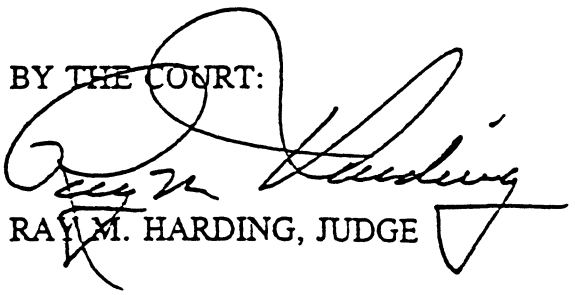
3) Regarding child support. the Court confirmed the stipulation previously entered into by the parties, finding it to be reasonable. As such, the Court did not set figures for the parties' respective incomes. The amount to be paid by the Plaintiff each month until the youngest child reaches age 18 is outlined in the earlier memorandum.

Counsel for Defendant is to prepare an order within 15 days of this decision consistent with the terms of this memorandum and submit it to opposing counsel for approval as to form prior to submission to the Court for signature. This memorandum decision has no effect until such order is signed by the Court.

ATTACHMENT B

Dated this 7th day of March, 1994.

BY THE COURT:



RAY M. HARDING, JUDGE

cc: Steven Tycksen, Esq.
Gordon Jensen, Esq.

FILE COPY

Steven C. Tycksen (3300)
Lone Peak Law Office
Attorney for Defendant
Post Office Box 480
Draper, Utah 84020-0480
TELEPHONE (801) 572-2700

IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR UTAH COUNTY, STATE OF UTAH

DAVID N. MOORE,	:	
Plaintiff	:	FINDINGS OF FACT AND CONCLUSIONS OF LAW
vs.	:	AND JUDGMENT
SANDRA L. MOORE,	:	Civil No. 864403096
Defendant	:	Judge Ray Harding

This matter came on for trial on Wednesday, October 28, 1993, at the hour of 10:00 a.m. The Plaintiff was present in Court and represented by his attorney Gordon Jensen. The Defendant was present and represented by her attorney, Steven C. Tycksen. The parties were sworn and gave testimony and presented documentary evidence. The court took the matter under advisement and on December 2, 1993, issued a Memorandum Decision. A Request for Supplemental Rulings was filed and the Court issued a supplemental Memorandum Decision in March 1994. Based thereon the Court does now hereby make and enter the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The parties were divorced by an Order of this Court on August 25, 1987.
2. The Decree of Divorce was based upon a stipulation entered into by the

ATTACHMENT C

parties. The Stipulation provided that $1500.00 would be paid by the Plaintiff as a "minimum subsistence level of support" for the Defendant and the six minor children that were living with her as issue of the marriage. This level was to continue for three (3) years regardless of remarriage or emancipation.

3. The Court finds that of this $1500.00 amount, $300.00 was for alimony and $200.00 per month was for each of the six children for child support. As of the time of trial, all but three of the children are minors.

4. The Court finds that for the three year period from the date of the divorce through August 24, 1990, that the Plaintiff's obligation for child support and alimony is $1,500.00 per month. Commencing August 25, 1990, through March 9, 1991, the Plaintiff's child support obligation was $800.00 per month. Commencing March 10, 1991, to February 12, 1994, Plaintiff's child support obligation was $600.00 per month. The Plaintiff's child support obligation was and will continue to be $400.00 per month from February 13, 1994, to July 28, 1996. From July 29, 1996, to March 22, 2001, Plaintiff's child support obligation will be $200.00 per month.

5. The Court finds that there is not evidence that this amount should be increased. Regarding child support, the Court confirms the stipulation previously entered into by the parties, finding it to be reasonable. As such, the Court does not set figures for the parties' respective incomes.

6. The Court finds that since the time of the divorce the Plaintiff owed and has paid annually, total alimony and child support as set forth on the attached summary. Defendant is entitled to a total judgment for child support and alimony arrearages unpaid in the amount of $26,585.80. Said judgment shall bear interest from the date of

entry of this order at the statutory judgment rate of 9.22%.

7. The Court finds that the BYU Box Seats and the interest of the Plaintiff in KC Partners are marital assets subject to distribution at this time.

8. The Court finds that the BYU Box Seats have no real monetary value and awards them to the Plaintiff.

9. The Court finds that the value of the Plaintiff's interest in KC Partners was not more than $1,000.00 and orders Plaintiff to pay to the Defendant the sum of $500.00 as her interest therein.

10. Plaintiff is to continue to provide medical coverage on the children.]

11. The Plaintiff is not in contempt of court.

CONCLUSIONS OF LAW AND JUDGMENT

12. The Decree of Divorce in this matter should not be modified, however the Court interprets the Decree as it relates to child support to mean that the Plaintiff will pay child support of $200.00 per month for each minor child after August 24, 1990, and $1500.00 combined child support and alimony from August 24, 1987 to August 24, 1990.

13. The Defendant should be awarded judgment against the Plaintiff for unpaid child support and alimony arrearages in the amount of $26,585.80 plus interest thereon at the statutory rate of 9.22% a.p.r. pursuant to Utah Code Sections 15-1-4 from the date of the entry of this order.

14. Each party shall bear his or her own attorney fees.

15. The Plaintiff should be awarded all future right title and interest to the BYU Box Seats.

16. The Defendant should be awarded judgment in the amount of $500.00 for

Plaintiff's interest in KC Partners.

17. The Plaintiff will continue to provide medical coverage on the children.

18. The Plaintiff is not in contempt of Court.

4/13/96

Judge Ray Harding
District Court Judge

Approved as to Form:

Gordon Jensen
Attorney for Plaintiff

CERTIFICATE OF MAILING

I certify that I am employed by the office of Steven C. Tycksen and that I mailed a true and correct copy of the foregoing postage prepaid to the following:

Gordon Jensen
136 South Main #721
Salt Lake City, Utah 84101

on this 10th day of March, 1995.

GORDON K. JENSEN - A4351
Attorney for Plaintiff
620 Judge Building
8 East Broadway
Salt Lake City, UT 84111
Telephone: (801) 532-7858

IN THE FOURTH JUDICIAL DISTRICT COURT

IN AND FOR UTAH COUNTY, STATE OF UTAH

DAVID MOORE, Plaintiff, vs. SANDRA MOORE (Nielson), Defendant.	PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT Case No. 86440309 Judge Ray M. Harding

The plaintiff, pursuant to Rule 59(e) of the Utah Rules of Civil Procedure, moves this Court to alter or amend the judgment entered on April 13, 1995 to require the defendant to share equally the cut of pocket costs of the medical insurance premium paid by the plaintiff, as well to share equally all reasonable and necessary uninsured medical expenses, including deductibles and co-payments, incurred for the dependent children. This motion is supported by an accompanying memorandum.

DATED this 24th day of April, 1995.

LEHMAN, JENSEN & DONAHUE, L.C.

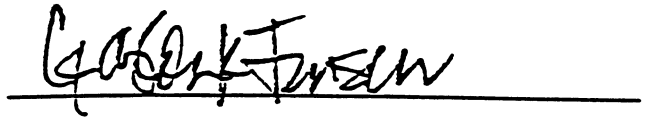
GORDON K. JENSEN

ATTACHMENT D

MAILING CERTIFICATE

The undersigned certifies that a true and correct copy of the foregoing was mailed this 24th day of April, 1995, via first class U.S. Mail, postage prepaid, upon the following:

Stephen C. Tycksen
LONE PEAK LAW OFFICE
P.O. Box 480
Draper, Utah 84020-0480



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IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH

DAVID MOORE, Plaintiff, vs. SANDRA MOORE (NIELSON), Defendant.	MEMORANDUM DECISION CASE NO. 86440309 DATE: June 19, 1995 JUDGE: RAY M. HARDING LAW CLERK: Laura Cabanilla DEPUTY CLERK: Georgia Snyder

This matter came before the Court for consideration of Plaintiff's Motion to Alter or Amend Judgment. Having received and considered Plaintiff's motion, together with memoranda in support, in opposition and in reply to the motion, the Court hereby denies the motion. The Court finds that it has specifically ruled and made findings of fact on the issue of health insurance in this matter and finds no justification to alter or amend that judgment.

Counsel for Defendant is to prepare an order within 15 days of this decision consistent with the terms of this memorandum and submit it to opposing counsel for approval as to form prior to submission to the Court for signature. This memorandum decision has no effect until such order is signed by the Court.

Dated this 19th day of June, 1995.

BY THE COURT:

RAY M. HARDING, JUDGE

cc: Steven C. Tycksen, Esq.
Gordon K. Jensen, Esq.

ATTACHMENT E

Steven C. Tycksen (3300)
Lone Peak Law Office
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Post Office Box 480
Draper, Utah 84020-0480
TELEPHONE (801) 572-2700

IN THE FOURTH JUDICIAL DISTRICT COURT IN AND FOR
UTAH COUNTY, STATE OF UTAH

DAVID N. MOORE,	:	
Plaintiff	:	ORDER ON PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT
vs.	:	
SANDRA L. MOORE,	:	Civil No. 864403096
Defendant	:	Judge Ray Harding

After review of Plaintiff's Motion to Alter or Amend Judgment, and for good cause appearing herein it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. Plaintiff's motion is denied.

DATED and SIGNED this 6th day of ~~June~~ October 1995.

/s/
JUDGE RAY HARDING

Approved as to form:

Gordon K. Jensen
Attorney for Plaintiff

ATTACHMENT F

ATTACHMENT 6 = EXHIBIT 10

DAVID MOORE CHILD SUPPORT AND HEALTH INSURANCE PAYMENTS

1987

	To Sandra	To Children	Health Insurance
July	$1,500.00		$ 83.30
August	1,500.00		83.30
September	1,500.00		83.30
October	1,500.00		83.30
November	1,500.00		83.30
December	1,500.00		83.30
	$9,000.00		$499.80

1988

	To Sandra	To Children	Health Insurance
January	$ 1,500.00		$ 83.30
February	2,000.00		365.00
March	1,500.00		365.00
April	1,500.00		365.00
May	1,500.00		365.00
June	1,500.00		
July	1,500.00		
August-Ness 18	1,000.00	$200.00 – Nessa	
September	1,000.00	200.00 – Nessa	
October	1,000.00	100.00 – Nessa	
November	1,000.00	200.00 – Nessa	80.00 + $586 Med Exp
December	1,000.00		80.00
	$15,550.00	$700.00	1,289.30

1989

	To Sandra	To Children	Health Insurance
January	$1,000.00	$ 200.00 – Nessa	$ 80.00
February	1,000.00		110.00
March	1,000.00		110.00
April	1,000.00		110.00
May	1,000.00		110.00
June	400.00	200.00 – Holly	110.00
July	800.00	200.00 – Holly	110.00
August	800.00	400.00 – Holly, Nessa	145.00
September	800.00	200.00 – Holly	145.00
October	800.00	200.00 – Holly	145.00
November	700.00		145.00
December	516.00		150.00
	$9,816.00	$1,200.00	$1,435.00

1990

	To Sandra	To Children	Health Insurance
January	$ 566.00	$100.00 – Nessa	150.00
February	516.00		150.00
March	516.00	110.00 – Kids	150.00
April-Holly 18	700.00		91.90
May	500.00		91.90
June	300.00		91.90
July	400.00		91.90
August	400.00	(300) (200)	91.90
September	1,000.00	500.00 – Holly, Nessa	91.90
October	1,000.00	200.00 – Nessa	91.90
November	1,000.00	100.00 – Nessa	91.90
December	1,000.00		91.90
	$7,898.00	$810.00	$1,277.10

1991

	To Sandra	To Children	Health Insurance
January	$1,000.00		$91.90
February	1,000.00	**$200.00–Nessa**	91.90
March–Matt 18	1,000.00		91.90
April	1,000.00		91.90
May	800.00		91.90
June	600.00		91.90
July			91.90
August	200.00		91.90
September	300.00		625.00
October	300.00		625.00
November		80.00 – Kids	625.00
December			625.00
	$6,200.00	$280.00	$2,702.10

1992

	To Sandra	To Children	Health Insurance
January			$ 625.00
February			625.00
March			625.00
April			731.00
May			722.00
June			722.00
July			722.00
August			722.00
September			722.00
October		**200.00–Matt**	722.00
November			722.00
December	$3,000.00		722.00
	$3,000.00	**$200.00**	$8,382.00

1993

January		$525.00 – Holly	$ 722.00
February		410.00 – Holly, Nessa	722.00
March			722.00
April	$2,900.00		260.00
May			260.00
June	$3,000.00		260.00
July			260.00
August			535.00
September	$ 200.00		535.00
October			535.00
	$2,900.00	$935.00	$4,811.00

GORDON K. JENSEN - A4351
Attorney for Plaintiff
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Telephone: (801) 532-7858

IN THE FOURTH JUDICIAL DISTRICT COURT

IN AND FOR UTAH COUNTY, STATE OF UTAH

DAVID MOORE, Plaintiff, vs. SANDRA MOORE (NIELSON), Defendant.	PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW Civil No. 864403096 DA Judge Ray M. Harding

The plaintiff, David Moore, submits the following Proposed Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The Decree of Divorce ("Decree") in this case was entered on July 20, 1987.

2. The Decree was drafted by counsel for Sandra Moore Nielson.

3. David Moore was not represented by counsel regarding the regarding the drafting of the Decree.

4. The plaintiff and the defendant have six children: Jenessa, born August 12, 1970; Holly, born April 14, 1972; Matt, born March 9, 1973; John, born February 12, 1976; Nathan, born July 28, 1978; and Jamie Lee, born March 22, 1983.

ATTACHMENT H

5. The Decree provided that the plaintiff was to pay the defendant the sum of "$1,500 per month, for alimony and child support."

6. The Decree does not make any specific allocation of the $1,500 regarding how much is to be paid for alimony and how much is to be paid for child support per month.

7. Negotiations of the parties before the Decree was entered establish that $300 per month was to be paid for alimony and $200 was to be paid for the six children of the plaintiff and defendant, for a total child support payment of $1,200 per month.

8. At the time the Decree of Divorce was entered, David Moore was earning only $2,000 a month. It was anticipated that David Moore's income would increase in the future.

9. The Decree stated that the $1,500 per month would not be reduced or modified before June 1, 1988.

10. David Moore filed his initial Petition to Modify Decree of Divorce on or about September 15, 1989.

11. In July of 1988, Sandra Moore remarried.

12. In August of 1988, Jenessa Moore turned 18 and went to live in California. On April 14, 1990, Holly Moore turned 18. Matt Moore turned 18 on March 9, 1991.

13. David Moore paid $1,500 alimony and child support every month from July of 1987 through July of 1988, plus an extra $500 in February of 1988.

14. In August, 1988, David Moore began paying $1,000 alimony and child support, deducting $300 paid for alimony based on Sandra Moore's remarriage in July of 1988 and deducting $200 per month for Jenessa, who reached the age of majority in August of 1988.

15. From August 1988 to the beginning of April 1990, when Holly Moore reached the age of majority, David Moore paid a total of $16,414 in child support directly to Sandra Moore.

16. From August 1988 to April 1990, David paid an additional $1,110 directly to Jenessa Moore for support.

17. From June 1989 through December 1989, Holly lived with David Moore in Sandy, Utah. For that seven month period, David Moore reduced his child support payment to Sandra Moore by $200, representing support for Holly during those months.

18. Matt Moore turned 18 on March 9, 1991.

19. From April 1990 through March 1991, David Moore paid $9,300 in child support directly to Sandra Moore. During that period of time, David Moore paid $700 directly to Jenessa for support and $300 directly to Holly for college.

20. From April 1991 to the present David Moore has made cash payments directly to Sandra Moore of $9,300, including one $3,000 cashiers check in December 1992/January 1993 and a $2,900 cashiers check in April 1993.

21. In June 1993, David Moore gave title to a $3,000 1983 Chevy Citation to Sandra Moore. It was understood by the parties that that was $3,000 toward child support.

22. In addition to these direct child support payments, David Moore has paid over $70,000 since entry of the Decree either directly to his children or for clothing, cars and car repairs, food, vacations, gifts, or other miscellaneous expenses, all for the childrens' benefit.

23. In September of 1991, David Moore had to start making payments for COBRA health insurance coverage when his employment with Tiffany's terminated. His monthly payment for insurance went from $91.90 to the COBRA payment of $625 per month. David Moore paid $625 per month for health insurance through April of 1992, when the COBRA insurance premium rose to $722 per month. That $722 a month was paid through March of 1993, when COBRA coverage expired. David Moore then began paying $260 a month for HMO coverage provided through Metropolitan Life, his wife's insurer. Since August 1, 1993, David Moore has changed to a P.P.O. Insurance Health policy with Met Life at a cost to him for family coverage of $535 per month.

24. In November 1988, David Moore paid $586 to Sandra Moore for Jamie Moore's medical expenses.

25. Aetna, David Moore's health insurer through Tiffany and Company, has paid $27,263.97 for medical treatment provided to Jamie Moore.

26. The only amount payable to Sandra Moore under the Ron Davis receivable was the last payment of $4,080.92. That amount was paid by David Moore to Sandra Moore as follows: $2,000 paid on January 1, 1988; $500 paid on September 5, 1988; $500 paid on September 20, 1988; $500 paid on October 1, 1988; and $500 paid on October 18, 1988.

27. David Moore filed an individual Chapter 7 Bankruptcy Petition on December 22, 1992 in the United States Bankruptcy Court for the Central District of California, case number LA92-58443-KL.

28. David Moore listed Alan Nielson, Sandra Nielson, and Steve Tycksen as creditors in his bankruptcy to discharge any debts related to medical bills, miscellaneous costs, other claims, and attorney fees.

29. Having qualified for bankruptcy protection, David Moore had all dischargeable debts discharged by order of the United States Bankruptcy Court on April 30, 1993.

30. In 1987, David Moore's "gross income" for child support guideline purposes was $2,132.00 per month. Based on guidelines, monthly support payments in 1987 were $697. David Moore paid $1,200 in child support each month from July to December of 1987.

31. In 1988, David Moore's "gross income" for child support guideline purposes was $2,061.00 per month. Bases on guidelines, monthly support payments in 1988 were $612 per month for the first six months and $559 for the last six months for a total of $7,026 for the year. In 1988, David Moore paid $13,400 in child support directly to Sandra Moore and another $700 directly to his daughter Jenessa.

32. In 1989, David Moore's "gross income" for child support guideline purposes was $2,692 per month. Bases on guidelines, monthly support payments in 1989 were $716, for a total yearly child support payment of $8,592. In 1989, David Moore paid $9,816 in child support directly to Sandra Moore Nielson and another $1,200 directly to his daughters Jenessa and Holly.

33. In 1990, David Moore's "gross income" for child support guideline purposes was $3,655 per month. Based on guidelines, monthly support payments in 1990 were $979 a month for four months and $880 for eight months, for a total yearly payments of $10,956. In 1990, David Moore paid $7,898 directly to Sandra Moore Nielson and another $810 directly to his children.

34. In 1991, David Moore's "gross income" for child support guideline purposes was $3,347 per month. Based on guidelines, monthly child support payments in 1991 were $695 a month for three months and $580 a month for nine months, for a total yearly payment

of $7,305. In 1991, David Moore paid $6,200 directly to Sandra Moore and another $280 directly to his children.

35. In 1992, David Moore's "gross income" for child support guideline purposes was $3,364, or $280 per month. Based on guidelines, monthly support payments in 1992 were $73 per month. In 1992, David Moore paid $3,000 in child support, or $250 a month, as well as $699 a month in health insurance premiums, or $8,382 total in total health insurance premiums.

36. In 1993, David Moore has made nothing in "gross income" under child support guidelines. He has, however, paid $6,100 in child support directly to Sandra Moore Nielson, $935 to Holly and Jenessa, and $4,811 in health insurance premiums.

CONCLUSIONS OF LAW

1. Under the Decree of Divorce, David Moore was to pay $300 in alimony to the plaintiff and $200 per child per month in support until each child reached the age of majority.

2. That child support obligation was excessive based on David Moore's income and was not in line with child support guidelines.

3. In August of 1988, David Moore's alimony obligation of $300 per month ended when Sandra Moore remarried.

4. In August of 1988, David Moore's child support obligation was reduced when Jenessa Moore reached the age of majority.

5. From June 1989 to December 1989, David Moore's child support obligation was reduced while Holly Moore was living with David Moore, who was providing her total support.

6. On April 14, 1990, David Moore's child support obligation was reduced when Holly Moore reached the age of majority.

7. On March 9, 1991, David Moore's child support obligation reduced when Matt Moore reached the age of majority.

8. Because of David Moore's bankruptcy discharge, any property settlement between the parties is discharged, as are any unpaid medical expenses and any attorney's fees allegedly owed by David Moore.

9. David owes nothing to Sandra Moore Nielson on the Ron Davis Receivable.

10. Based on the Findings of Fact, there has been a substantial change of circumstances since the entry of the Decree of Divorce. This substantial change in circumstances merits a modification in the Decree of Divorce.

11. Under all of the circumstances presented by the evidence, David Moore is current in his child support obligation to Sandra Moore Nielson.

12. Based on his current financial circumstances, David Moore is ordered to pay _____ child support per month, representing _____ per child per month, for the support of John Moore, Nathan

Moore, and Jamie Lee Moore. That support obligation as to each child will terminate when that child reaches the age of majority.

13. Regarding health insurance premiums, _____

_____.

DATED this _____ day of October, 1993.

By the Court:

_____
Ray M. Harding
District Court Judge